

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

D.G., by Next Friend G., Gail Stricklin, et  
al.,

Plaintiffs,

vs.

C. BRAD HENRY, in his official capacity  
as Governor of the State of Oklahoma,  
et al.,

Defendants.

Case No. 08-CV-74-GKF-FHM

**OPINION AND ORDER**

Plaintiff Children's Motion to Reopen Fact Discovery for Limited Purpose [Dkt. 690] is before the Court for decision. Defendants have filed a response [Dkt. 715] and Plaintiffs have filed a reply. [Dkt. 724]. Plaintiffs seek an order to reopen fact discovery for the limited purpose of requiring Defendants to produce what Plaintiffs' describe as a small number of reports and other documents, including any documents Defendants intend to use at trial that evidence developments post-dating the discovery cutoff.

Plaintiffs argue that the requested discovery is necessary for two reasons: to prevent Defendants from ambushing Plaintiffs at trial with evidence of developments that post-date the discovery cutoff; and to allow Plaintiffs to present evidence of Defendants' current practices in support of Plaintiff's case.

Under the scheduling order, Defendants must provide Plaintiffs with copies of Defendants' trial exhibits by December 5, 2011. Thus, Plaintiffs will have copies of any exhibits Defendants intend to use that evidence developments post-dating the discovery cutoff well before the February 21, 2012 trial. Plaintiffs' concern with an ambush, therefore, does not support re-opening discovery.

Plaintiffs' need to have evidence of Defendants' current practices to support Plaintiff's case may justify production of specific documents from Defendants which update reports Plaintiffs already have and will rely on to support Plaintiffs' case. The problem with Plaintiffs' current motion is that the proposed discovery is broad and unduly burdensome on Defendants. Plaintiffs' motion identifies 33 different reports and 16 broad document requests, including e-mail discovery. The requests are not limited to updating specific reports that the Plaintiffs actually intend to rely on to prove their case.

Plaintiff Children's Motion to Reopen Fact Discovery for Limited Purpose [Dkt. 690] is, therefore, denied without prejudice. The parties are directed to confer and attempt to agree on the production of updated reports related to the remaining issues in the case. If the parties are unable to resolve the issues, Plaintiffs may file a motion to compel.

SO ORDERED this 23rd day of November, 2011.

  
FRANK H. McCARTHY  
UNITED STATES MAGISTRATE JUDGE